

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

American Family Mutual Insurance
Company, S.I.,

Civil No. 18-2342 (DWF/ECW)

Plaintiff,

ORDER

v.

C.C., a minor, by and through his mother and natural guardian, Heidi Clobes; Alec Batson, an individual; Jose Castillo, an individual; Salvador Chavez, Jr., an individual; Yi Chen, an individual; Donovan Hall, an individual; K.J.; Jacob Kotz, an individual; Curtis Nash, an individual; Alyssa Sanford, an individual; and Juan Carlos Lamas, Jr., an individual,

Defendants.

This matter is before the Court on a Motion for Judgment on the Pleadings brought by Defendant Alec Batson (Doc. No. 29), a Motion for Judgment on the Pleadings brought by Defendant K.J (Doc. No. 36), and a Motion for Sanctions brought by Defendant K.J. (Doc. No. 42).

On August 9, 2018, Plaintiff American Family Mutual Insurance Co, S.I. (“American Family”) filed this Declaratory Judgment Action seeking a declaration of rights, duties, and obligations between it and C.C. (Doc. No. 1 (“Compl.””) ¶ 1.) This action relates to an underlying litigation where Batson and C.C., a minor, by and through his mother and natural guardian, Heidi Clobes, allege that Juan Carlos Lamas, Jr.

negligently caused them injury when he drove into them in a parking lot. (*Id.* ¶¶ 16-20.) American Family, who issued a family car insurance policy to Clobes, seeks a declaration regarding the scope of coverage available under the Uninsured Motorists Coverage in the Policy. In filing this action, American Family identified all interested parties, including Batson, C.C., and K.J., also a minor.¹ On January 15, 2019, counsel for Defendants C.C., Batson, and K.J. e-mailed a proposed motion for judgment on the pleadings on behalf of Batson and K.J., arguing that they are improper parties because there was no “privity of contract” between his clients and American Family. American Family acknowledged the receipt of the proposed motion, but indicated that it preferred to address the issue at the upcoming pre-trial conference on January 29, 2019.

At the pre-trial conference, and after notification that K.J. is a minor, the Rule 26(f) Report, the Affidavit of Service, and the Complaint were identified to be redacted by American Family by February 1, 2019. On January 31, 2019, American Family redacted and re-filed the documents. On February 1, 2019, American Family agreed to dismiss both Batson and K.J. without prejudice, and with prejudice if Defendants execute an affidavit confirming no “resident relative” issues exist. (Doc. No. 57.)

First, with respect to the motion for sanctions, the Court notes that K.J. has not filed a memorandum in support of her motion for sanctions. Because a memorandum is required under Local Rule 7.1(b)(1), that motion is properly stricken. In addition, because

¹ At the time of filing, American Family asserts that it was not aware that K.J. was a minor.

American Family has redacted and re-filed the documents after learning that K.J. is a minor, there is no issue to resolve.

Second, as to the motions for judgment, the Court notes American Family has agreed to dismiss both Batson and K.J. In addition, the Court concludes that both motions, via which Defendants claim that the inclusion of Batson and K.J. was “frivolous” and seek attorney fees and costs for having to defend against a “frivolous” action, were improperly filed within the 21-day “safe harbor provision” of Rule 11. *See* Fed. Rules Civ. P. Rule 11.

Therefore, based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant Batson’s Motion for Judgment on the Pleadings (Doc. No. [29]) is **STRICKEN**.
2. Defendant K.J.’s Motion for Judgment on the Pleadings (Doc. No. [36]) is **STRICKEN**.
3. Defendant K.J.’s Motion for Sanctions (Doc. No. [42]) is **STRICKEN**.
4. Defendant Batson and Defendant K.J. are **DISMISSED WITHOUT PREJUDICE** as parties in this matter.

Dated: May 1, 2019

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge